a separate and distinct offence, and a separate charge should have been framed against each of them.

Thirdly, and this was the most serious flaw in the proceedings, the two appellants were charged with having committed an offence on 30th September, 1963, against section 24 of the Minor Offences Ordinance (Chapter 117) when in fact that section was no longer in existence. It was repealed on Malaysia Day (16th September, 1963) by the Modification of Laws (Internal Security and Public Order) (Singapore) Order, 1963, which applies to the State of Singapore. As the appellants were prosecuted for an offence under a repealed law alleged to have been committed after the repeal of the law, the charge was clearly illegal, and the convictions could not be sustained. I therefore quashed the convictions, set aside the sentences and discharged the appellants. It is still open to the Public Prosecutor to prosecute them, if so desired, under the Corrosive and Explosive Substances and Offensive Weapons Ordinance, 1958, of the Federation of Malaya, which was extended to the State of Singapore by the abovenamed Order with effect from Malaysia Day.

Conviction quashed.

GHAZALI v. PUBLIC PROSECUTOR

[A.Cr.J. (Ong J.) March 21, 1964]
[Ipoh — Criminal Appeal No. 126 of 1963]

Administrative Law—Ministerial directive to Licensing Board—Board imposing condition to licences—Whether condition ultra vires.

Road Traffic—Ministerial directive to Licensing Board to impose condition to licences—Condition that only driver of Malay race may drive—Breach of condition—Road Traffic Ordinance, 1958, ss. 107, 118, 119 & 120(2).

Legislation—Rule-making power—Validity of delegated legislation—Court can canvass.

In exercise of powers conferred under section 107 of the Road Traffic Ordinance, 1958, the Minister of Transport published a general directive in which he stated, *inter alia*, "that in exercise of its powers under sections 118 and 119 a Licensing Board shall attach to any licence issued under Part V to a Malay....in respect of a taxi or hire-car a condition requiring that only a Malay driver shall be employed to drive such vehicle ...." Section 119 provides that subject to Part V of the Ordinance the Licensing Board may attach such condition as it may think fit with respect to matters to which it is required to have regard under section 118. The material provision of section 118, namely subsection (5) states: "Subject to the provisions of subsections (2), (3) and (4) of this section the Licensing Board in exercising its discretion under this section shall give preference to an application from a Malay or a company a preponderant part or if there is no such company suitable a substantial part of whose capital is owned by Malays over any other application".

The appellant was charged with breach of the condition attached to his licence which prohibited his taxi to be driven by a person other than a Malay and was convicted and fined. He appealed on two grounds, one of which was that the Licensing Board in imposing the condition was acting *ultra vires*.

Held: (1) the powers of the Licensing Board to attach conditions to licences being those in section 119 were confined to matters referred to in section 118(5). These powers entitled the Board to give preference to a Malay when issuing a licence. This done, the powers were exhausted. The Board was therefore acting *ultra vires* in imposing a further condition that only a Malay driver could be employed on the vehicle;

(2) the ministerial directive under section 107 did not supply additional powers to the Licensing Board to validate the condition. The authority of the Minister of Transport to give general directives is, by reason of section 107(3), limited to directives on policy to be followed in determining applications and does not extend to matters arising thereafter.

Case referred to:—

(1) *Rossi* v. *Edinburgh Corporation* [1905] A.C. 21, 27.

CRIMINAL APPEAL.

N. H. Chan (*V. Jeyaratnam* with him) for the appellant.

Mohamed bin Yaacob (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Ong J.: The appellant was charged in the Magistrate's Court at Kampar as follows:

"That you on 7.5.63 at about 2.50 p.m. at 22½ milestone Ipoh/Kampar Road, Kampar, in the State of Perak, being the holder of P.S.V. Permit No. 001965 Ref. A/PSV 3, authorising you to use motor taxi No. H.369 for the carriage of passengers for hire or reward, did commit breach of condition No. 8 of the permit issued in respect of the said taxi by permitting one Beh Ee Soon(m) i/c 3511385 to drive the taxi instead of a person of the Malay race, and that you have thereby committed an offence punishable under sec. 120(2) of the Road Traffic Ordinance, 49/58."

He was convicted and fined the sum of $100, in default imprisonment for 3 months. He appeals against the decision on two grounds, namely, that the Licensing Board in imposing the said condition was acting *ultra vires*, and that in any event the condition is void as being repugnant to article 8 of the Constitution.

The simple facts, as set out in the charge, were not disputed, but only the validity of the condition which was in these terms: "The authorised vehicle shall at all times be driven only by a person of the Malay race."

This particular condition came to be inserted in taxi licences in compliance with a directive of the Minister of Transport published in L.N. 37/61, reproduced here in full:

"ROAD TRAFFIC ORDINANCE, 1958

General Directive Under Section 107 No. 1

In exercise of the powers conferred by section 107 of the Road Traffic Ordinance, 1958, the Minister of Transport hereby directs that in the exercise of its powers under sections 118 and 119 a Licensing Board shall attach to any licence issued under Part V to a Malay or a company a preponderant part of whose capital is owned by Malays in respect of a taxi or hire car a condition requiring that only a Malay driver shall be employed to drive such vehicle, and may attach to such licences issued in respect of other classes of vehicle a

condition requiring that only Malay drivers, attendants or conductors as the case may be, or such proportion thereof as the Board shall decide, shall be employed.

Dated this 19th day of January, 1961.

Sardon bin Haji Jubir,

Minister of Transport.

Explanatory Note — This Directive is designed to further the Government's policy of ensuring the effective participation of Malays in the Road Transport Industry, by reducing the opportunities for name-lending, an offence under section 126 of the Ordinance, and by simplifying investigations into suspect cases.

(To be laid before both Houses of Parliament under section 107(4) of the Road Traffic Ordinance, 1958)."

Part V of the Ordinance, comprising sections 91 to 136, concerns the regulation of public transport. In section 107 the material sub-section is (3), namely:—

"Subject to the provisions of this Part of this Ordinance and of any rules made thereunder the Minister may give such *general directives on the policy to be followed in determining applications* as he may think desirable in the public interest and the Licensing Board shall comply with such general directives."

Section 120 reads:

"120. (1) It shall be a condition of every licence granted under this Part of this Ordinance —

(a) that the authorised vehicle is maintained in a fit and serviceable condition;

(b) that any provisions contained in any written law with respect to limits of speed and weight laden and unladen and the loading of vehicles are complied with in relation to the authorised vehicle;

(c) that the provisions of this Part of this Ordinance relating to the keeping of records are complied with.

(2) The holder of such licence or any person using or causing or permitting the use of a vehicle in respect of which such licence has been issued, who fails to comply with any condition attached to such licence under the provisions of this section or section 119 shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding two thousand dollars or to both such imprisonment and fine.

(3) The Licensing Board may at any time and from time to time in its discretion cancel or vary any of the conditions attached to a licence under the provisions of section 118 of this Ordinance."

In this case the charge alleged an offence punishable under sub-section (2), being the failure *to comply with any condition attached to such licence under the provisions of this section or section 119*. We are therefore necessarily referred to section 119, since the appellant was not charged for a breach of any of the statutory conditions (a), (b) or (c) of section 120(1).

Section 119 provides that "Subject to the provisions of this part of this Ordinance the Licensing Board may attach to any licence granted under this Part of this Ordinance such conditions as it may think fit with respect to the matters to which it is required to have regard under section 118 of this Ordinance...."

I think there can be no two views that the Licensing Board does not have unlimited powers under section 119 to impose arbitrarily any conditions as it may think fit, the words of limitation being "with respect to the matters to which it is required to have regard under section 118 of this Ordinance."

Sub-section (2) of section 118 sets out the matters to which the Licensing Board shall have regard, primarily and in particular. I quote it in full:

"118. (2) The Licensing Board *in exercising its discretion* under this section shall have regard primarily to the interests of the public generally, including those of persons requiring as well as those of persons providing facilities for transport whether by road, rail, water or air, and in so doing shall have particular regard to the following matters:

(a) the suitability of the routes on which a service may be provided under the licence;

(b) the needs of the area as a whole in relation to traffic, the elimination of unnecessary services, the provision of unremunerative services and the co-ordination of all forms of transport including transport by rail, water or air;

(c) the financial ability of the applicant to operate the proposed service;

(d) the conduct of the applicant in any position he may hold or have held as a provider of commercial transport service;

(e) the number and type of vehicles proposed to be used under the licence;

(f) in the case of an application for a carrier's licence, where the applicant is the holder of an existing licence of the same class, the extent to which he is authorised to use goods vehicles thereunder for the carriage of goods for hire or reward;

(g) in the case of an application for a 'B' licence, the extent to which the applicant intends that the vehicle proposed to be used under the licence shall be used for the carriage of goods for hire or reward."

Sub-section (2) has no application in this case because the Minister's directive was one that clearly left no discretion to the Board by prohibiting absolutely the employment of any taxi-drivers other than Malays for Malay-owned vehicles. So there remains only sub-section (5) which may be considered to be relevant. It reads:

"(5) Subject to the provisions of sub-section (2), (3) and (4) of this section the Licensing Board in exercising its discretion under this section shall give preference to an application from a Malay or a company a preponderant part or if there is no such company suitable a substantial part of whose capital is owned by Malays over any other application:"

Such preference had in fact already been given. The appellant has had his taxis, of which taxi H.369 was one. Consequently the application and effect of sub-section (5), must be deemed to have been fully exhausted.

Reading sections 118 and 119 together, I am unable to find any power in the Licensing Board which authorises it to impose the condition impugned in this appeal.

The question then arises: Does the ministerial directive, by purporting to do, supply the powers that are lacking under sections 118 and and 119? In my opinion the answer must be in the negative because the authority of the Minister of Transport to give general directives is, by sub-section (3) of section 107, expressly made "subject to the provisions of this Part of this Ordinance," that is to say, Part V, and is limited to directives on policy to be followed in determining applications, not matters arising thereafter.

It is clear law that no rule, regulation or by-law made under statutory powers must go beyond or be repugnant to the enactment under which they are made. It is also trite law that the validity of delegated legislation as a general rule can be canvassed by the Courts, and that in the absence of express statutory provision to the contrary, the Courts may inquire whether the rule-making power has been exercised in accordance with the provisions of the statute by which it is created.

I think I need cite only one authority in this connection: *Rossi* v. *Edinburgh Corporation.*[1] There the question was raised whether the civic authority had power to make regulations for the sale of ice cream in the form of a licence purporting to give effect to the Edinburgh Corporation Acts, 1900 and 1901. The statutes only made a licence necessary for the sale of ice cream, but the licence issued went further to limit the days and hours of sale. It was held that the licence as drawn was *ultra vires.* In that case Lord Davey said:

"In the year 1900 the town council or the magistrates of Edinburgh thought fit to apply to the Legislature and the Legislature passed an Act for the regulation of billiard-rooms and the sale of ice-cream. I must assume that there were circumstances connected with the trade of selling ice-cream in the city of Edinburgh which justified the intervention of the Legislature and made it right to impose special provisions on the sale of ice-cream which are not applicable to the sale of similar commodities. But, every restriction and every regulation such as I find in the Act of 1900, repeated in the provisional order of 1901, is of course *pro tanto* a restraint upon the ordinary right of every British subject. It is in fact a restraint of trade, and I am of opinion that although the section of the Act and the provisional order in which I find such provisions ought to be construed fairly and ought to be construed so as reasonably to effect the object which the Legislature must be presumed to have had in view, *you ought not by implication to extend the restriction of that particular trade further than the Legislature* has sanctioned, and still less ought you to give such a construction to clauses of that description as would impose a restraint, not only upon the exercise of the particular trade which is in question but also upon the exercise of other trades which are not in question."

For the very same reasons I hold that it was *ultra ires* the Licensing Board to impose the condition prohibiting any person not a Malay from driving the appellant's taxi. I accordingly allow the appeal and set aside the conviction and sentence. The fine, if paid, should be refunded.

Under article 128 of the Constitution, as amended by section 14(2) of the Malaysia Act, 1963, I have no jurisdiction to pronounce any decision as to the effect of any provision of the Constitution; consequently this appeal must be allowed on the first ground alone. My view, however, will be stated on the second ground should this appeal be carried further by the Public Prosecutor under section 66 of the Courts of Judicature Act, 1964.

Appeal allowed.

Solicitors: *Cheang Lee & Ong.*

LIM LIAN GEOK v. THE MINISTER OF THE INTERIOR, FEDERATION OF MALAYA

[P.C. (Lord Cohen, Lord Evershed, Lord Morris of Borth-Y-Gest, Lord Hodson and Lord Donovan) March 23, 1964]

[Privy Council Appeal No. 23 of 19[illegible]]

Constitutional Law—Citizenship—Deprivation of—Constitution of the Federation of Malaya, arts. 25, 27—Validity of notice sent to citizen—Meaning of "ground" in art. 27—Requirement of particulars—"Disloyalty" and "disaffection".

On August 12, 1961, the Registrar-General of Citizens issued a notice to the appellant notifying him of a proposal to make an order under article 25 of the Federal Constitution to deprive him of his citizenship and drew his attention to article 27(2) which entitled the appellant to have his case referred to a Committee of Inquiry. The notice stated that if this right to an inquiry was not claimed the Government "will proceed to make the order" depriving him of citizenship. The notice alleged that the appellant had shown himself by act and speech to be "disloyal" and "disaffected" towards the Federation.

On September 12, 1961, an order of prohibition *nisi* was granted to the appellant prohibiting the Minister of the Interior from referring the appellant's case to a Committee of Inquiry. On appeal by the Minister, this order *nisi* was discharged on October 13, 1961, ([1962] M.L.J. 159). Against this decision, the appellant appealed to the Court of Appeal which dismissed the appeal on January 4, 1962 ([1962] M.L.J. at p. 165). On appeal to the Privy Council, the appellant argued: (a) the notice was defective as it was lacking in particulars and details of what was alleged against him; (b) the notice, though purportedly following a prescribed form, was in disregard of the rules of natural justice and expressed an unwarranted threat or indication; (c) the matters of complaint in the notice, even if true, could not reasonably amount to "disloyalty" or "disaffection" within article 25(1)(a).

Held: (1) article 27(1) requires notifying the citizen of the "ground" on which it is proposed to make the order. The word "ground" refers to that part (or parts) of articles 24 or 25 or 26 which is (or are) being invoked. In this case the appellant was informed that he had shown himself by "act and speech to be disloyal and disaffected towards the Federation of Malaya." That was the "ground" and no further particulars were therefore necessary;

(2) the words in the notice that if an inquiry is not claimed the Federal Government "will proceed to make the order" read in the context of the notice as a whole, were not calculated to mislead and meant that